

IN THE MATTER OF:)	SETTLEMENT AGREEMENT
)	
[Site Name])	U.S. EPA Region ____
[City, County, State])	CERCLA Docket No. _____
)	
[Name of Settling Parties])	PROCEEDING UNDER
SETTLING PARTIES)	SECTION 122(h)(1) OF CERCLA,
)	42 U.S.C. § 9622(h)(1)

**MODEL CERCLA SECTION 122(h)(1) CASHOUT SETTLEMENT AGREEMENT FOR
PERIPHERAL PARTY SETTLEMENTS NOT BASED UPON ABILITY TO PAY**

September 2014

This document contains automatic section and paragraph numbers and automatic section and paragraph cross references, and an automated Table of Contents. If you add or delete sections or paragraphs, DO NOT attempt to manually renumber any sections or paragraphs or cross references. Please see instructions at the end for more details.

This model and any internal procedures adopted for its implementation and use are intended solely as guidance for employees of the U.S. Environmental Protection Agency. They do not constitute rulemaking by the Agency and may not be relied upon to create a right or benefit, substantive or procedural, enforceable at law or in equity, by any person. The Agency may take action at variance with this model or its internal implementing procedures.

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I. JURISDICTION

1. This Settlement Agreement is entered into pursuant to the authority vested in the Administrator of the U.S. Environmental Protection Agency (EPA) by Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9622(h)(1), which authority has been delegated to the Regional Administrators of the EPA by EPA Delegation No. 14-14-D (Cost Recovery Non-Judicial Agreements and Administrative Consent Orders) and redelegated to **[insert reference to any Regional redelegation]**. This Settlement Agreement is also entered into pursuant to the authority of the Attorney General of the United States to compromise and settle claims of the United States, which authority, in the circumstances of this settlement, has been delegated to **[check with the Department of Justice (DOJ) contact to determine appropriate DOJ official]**.

2. This Settlement Agreement is made and entered into by EPA [,] [and] **[insert names or reference attached appendix listing settling parties]** (“Settling Parties”) [, and **insert names or reference attached appendix listing settling federal agencies (“Settling Federal Agencies”)**]. Each Settling Party consents to and will not contest the authority of the United States **[if Settling Federal Agencies (“SFAs”), insert: ,** and each Settling Federal Agency consents to and will not contest the authority of EPA,] to enter into this Settlement Agreement or to implement or enforce its terms.

II. BACKGROUND

3. This Settlement Agreement concerns the **[insert Site name]** (“Site”) located in **[insert Site location]**. EPA alleges that the Site is a facility as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

4. In response to the release or threatened release of hazardous substances at or from the Site, EPA undertook response actions at the Site pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and [will/may] undertake additional response actions in the future. **[NOTE: A brief description of the release or threatened release and of the response actions taken or to be taken by EPA or potentially responsible parties may be included.]**

5. In performing response action at the Site, EPA has incurred response costs and will incur additional response costs in the future.

6. EPA alleges that Settling Parties **[if SFAs, insert: and Settling Federal Agencies]** are responsible parties pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and are jointly and severally liable for response costs incurred and to be incurred at the Site.

7. EPA and Settling Parties **[if SFAs, insert: and Settling Federal Agencies]** recognize that this Settlement Agreement has been negotiated in good faith and that this Settlement Agreement is entered into without the admission or adjudication of any issue of fact or law. The actions undertaken by Settling Parties [and Settling Federal Agencies] in accordance with this Settlement Agreement do not constitute an admission of any liability by any Settling Party [or any Settling Federal Agency]. Settling Parties [and Settling Federal Agencies] do not admit, and retain the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement Agreement, the validity of the facts or allegations contained in this Section.

III. PARTIES BOUND

8. This Settlement Agreement shall be binding upon EPA [if SFAs, insert: and Settling Federal Agencies] and upon Settling Parties and their [heirs,] successors, and assigns. Any change in ownership or corporate or other legal status of a Settling Party, including but not limited to any transfer of assets or real or personal property, shall in no way alter such Settling Party's responsibilities under this Settlement Agreement. Each signatory to this Settlement Agreement certifies that he or she is authorized to enter into the terms and conditions of this Settlement Agreement and to bind legally the party represented by him or her.

IV. STATEMENT OF PURPOSE

[EXPLANATORY NOTE ON SETTLEMENT OPTIONS UNDER THIS MODEL: In exchange for the Covenants by EPA provided in Section [REF _Ref310943953 \r \h], peripheral party cashout settlements should address the risk of cost overruns during performance of response action at the Site through one of three means:

- 1) payment of an up-front premium;**
- 2) agreement to pay a percentage of actual future costs upon receipt of one or more future bills if total response costs exceed the estimate upon which Settling Parties' [and SFAs'] payment is based, as shown in the optional Payment of Additional Response Costs paragraphs in Section [REF _Ref310943104 \r \h] (Payment of Response Costs); or**
- 3) inclusion of the cost overrun reservation of rights shown in Paragraph [REF _Ref313448980 \r \h], which preserves EPA's ability to seek additional response costs or performance of response action from Settling Parties [and SFAs] if total response costs at the Site exceed the estimate upon which Settling Parties' [and SFAs'] payment is based.]**

9. By entering into this Settlement Agreement, the mutual objective of the Parties is to avoid difficult and prolonged litigation by allowing Settling Parties [if SFAs, insert: and Settling Federal Agencies] to make a cash payment [, which includes a premium,] [and, for Owner Settling Party, to implement land use restrictions]¹ to resolve their alleged civil liability under Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a) [, and under Section 7003 of RCRA, 42 U.S.C. § 6973], with regard to the Site as provided in the Covenants by EPA in Section [REF _Ref310943953 \r \h], subject to the Reservations of Rights by EPA in Section [REF _Ref310944070 \r \h] [if SFAs, insert: , and as provided in the Covenants by Settling Parties in Section [REF _Ref310943908 \r \h]].

V. DEFINITIONS

10. Unless otherwise expressly provided in this Settlement Agreement, terms used in this Settlement Agreement that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Settlement Agreement or its appendices, the following definitions shall apply:

¹ If land use restrictions are included, see introductory note in Section [REF _Ref398617933 \r \h * MERGEFORMAT] (Property Requirements).

[NOTE: Insert the following definition if Paragraph [REF _Ref310931975 \r \h] (Payment of Additional Response Costs) is included in the Settlement Agreement.]

["Additional Response Costs" shall mean all costs, including but not limited to direct and indirect costs, that EPA or the U.S. Department of Justice on behalf of EPA [or any other person]² incurs and pays at or in connection with the Site, to the extent such costs exceed \$ _____ **[insert total response cost estimate upon which Settling Parties' [and Settling Federal Agencies'] payment is based.]**]

[NOTE: In the following definition, it is generally sufficient to describe the property using the street address or the tax parcel ID number, but you also may use the legal property description. Legal property descriptions can be lengthy. It is common in conveyance documents to include the legal property description in an attachment. If using a legal property description, it should be the kind found in a deed.]

"Affected Property" shall mean all real property at the Site and any other real property, owned or controlled by Owner Settling Party, where EPA determines, at any time, that access or land, water, or other resource use restrictions are needed to implement response actions at the Site, including, but not limited to, the following properties **[insert property descriptions]**.

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601-9675.

"Day" or "day" shall mean a calendar day. In computing any period of time under this Settlement Agreement, where the last day would fall on a Saturday, Sunday, or federal or State holiday, the period shall run until the close of business of the next working day.

"Effective Date" shall mean the effective date of this Settlement Agreement as provided by Section [REF _Ref310944190 \r \h].

"EPA" shall mean the U.S. Environmental Protection Agency and its successor departments, agencies, or instrumentalities.

"EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

"Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year. Rates are available online at [HYPERLINK "https://www.epa.gov/superfund/superfund-interest-rates"].

² If the Settlement Agreement concerns an enforcement-lead site at which PRPs may be performing the Additional Response Action, include "or any other person" in this definition.

“National Contingency Plan” or “NCP” shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

[NOTE: Insert the following definition if any Settling Party is a Site owner.]

“Owner Settling Party” shall mean **[insert name]**.

“Paragraph” shall mean a portion of this Settlement Agreement identified by an Arabic numeral or a lower case letter.

“Parties” shall mean EPA [, and] Settling Parties [, and Settling Federal Agencies].

“RCRA” shall mean the Solid Waste Disposal Act, 42 U.S.C. §§ 6901-6992 (also known as the Resource Conservation and Recovery Act).

“Section” shall mean a portion of this Settlement Agreement identified by a Roman numeral.

“Settlement Agreement” shall mean this Settlement Agreement and any attached appendices. In the event of conflict between this Settlement Agreement and any appendix, the Settlement Agreement shall control.

[NOTE: If SFAs, insert the following definition.]³

“Settling Federal Agencies” shall mean **[insert names of specific federal entities whose liability is being resolved to make clear that only those entities and each of their direct successors is included]** and their successor departments, agencies, or instrumentalities.]

“Settling Parties” shall mean **[insert names of settling non-federal parties, or if numerous: those parties identified in Appendix ____]**

[NOTE: If Settling Federal Agencies are making payments toward past and/or future response costs incurred by Settling Parties, add definitions for “Settling Parties’ Past Response Costs” and “Settling Parties’ Future Response Costs.” DOJ’s Environmental Defense Section will generally take the lead in negotiating these definitions.]

“Site” shall mean the _____ Superfund Site, encompassing approximately ____ acres, located at **[insert address or description of location]** in **[insert City, County, State]**, and **[insert either: “generally shown on the map included in Appendix ____” or “generally designated by the following property description: ____.”]**

³ If the Region has any information suggesting federal agency liability, such information should be provided to DOJ as soon as possible. For information regarding CERCLA § 104(e) information requests to federal agencies, review the “Guidance on Issuing CERCLA Section 104(e)(2) Information Requests to Federal Agencies at Privately-owned Superfund Sites” (June 14, 2004), available at [[HYPERLINK "https://www.epa.gov/enforcement/guidance-issuing-superfund-104e2-information-requests-federal-agencies-privately-owned"](https://www.epa.gov/enforcement/guidance-issuing-superfund-104e2-information-requests-federal-agencies-privately-owned)].

“[Site name] Special Account” shall mean the special account, within the EPA Hazardous Substances Superfund, established for the Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3), and **[if applicable, identify prior settlement under which EPA established the special account]**.

“State” shall mean the State [or Commonwealth] of _____.

[NOTE: Insert the following definition if Section [REF _Ref352161970 \r \h] (Property Requirements) is included in the Settlement Agreement.]

[“Transfer” shall mean to sell, assign, convey, lease, mortgage, or grant a security interest in, or where used as a noun, a sale, assignment, conveyance, or other disposition of any interest by operation of law or otherwise.]

“United States” shall mean the United States of America and each department, agency, and instrumentality of the United States, including EPA [and Settling Federal Agencies].

VI. [SEQ CHAPTER \h \r 1]PAYMENT OF RESPONSE COSTS

11. **Payment by Settling Parties for Response Costs.** Within 30 days after the Effective Date, Settling Parties shall pay to EPA \$_____, plus an additional sum for Interest on that amount calculated from **[insert date, e.g., date of last cost summary]** through the date of payment. **[NOTE: As an alternative to calculation and payment of interest directly to EPA, the following alternative language may be used if Settling Parties agree to place the payment amount (plus accrued Interest from the date that would have been inserted above through the date the escrow account is created) into an interest-bearing escrow account to be disbursed to EPA upon the Effective Date:** Within 7 days after Settling Parties receive notice from EPA that this Settlement Agreement has been signed by EPA **[if DOJ approval is needed, insert:** and approved by the Attorney General or his/her designee], Settling Parties shall deposit \$_____ into an interest-bearing escrow account in a duly chartered bank or trust company that is insured by the Federal Deposit Insurance Corporation. If the Settlement Agreement is not made effective after public comment, the monies placed in escrow, together with accrued interest thereon, shall be returned to Settling Parties. If the Settlement Agreement is made effective after public comment, Settling Parties shall, within 15 days thereof, cause the monies in the Escrow Account, together with accrued interest thereon, to be paid to EPA in accordance with Paragraphs [REF _Ref310946295 \r \h] and [REF _Ref397885193 \r \h] (Notice of Payment).]

12. Settling Parties shall make payment to EPA by Fedwire Electronic Funds (EFT)
Transfer to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read “D 68010727

Environmental Protection Agency”

Such payment shall reference Site/Spill ID Number _____ and the EPA docket number for this action.

[NOTE: Regions may substitute the following instructions for payment by Automated Clearinghouse (ACH) or for online payment:

For ACH payment:

Settling Parties shall make payment to EPA by Automated Clearinghouse (ACH) to:

PNC Bank
808 17th Street, NW
Washington, DC 20074
Contact – Jesse White 301-887-6548
ABA = 051036706
Transaction Code 22 - checking
Environmental Protection Agency
Account 310006
CTX Format

Such payment shall reference Site/Spill ID Number _____ and the EPA docket number for this action.

For online payment:

Settling Parties shall make payment at [HYPERLINK "https://www.pay.gov"] to the U.S. EPA account in accordance with instructions to be provided to Settling Parties by EPA in accordance with instructions to be provided to Settling Parties by EPA.]

[NOTE: If Settling Parties have difficulty making EFT or online payments, you may substitute the following: Settling Parties shall make payment by official bank check made payable to “EPA Hazardous Substance Superfund.” Each check, or a letter accompanying each check, shall identify the name and address of the party(ies) making payment, the Site name, Site/Spill ID Number _____, and the EPA docket number for this action, and shall be sent to:

U.S. Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000]

[NOTE ABOUT SPECIAL ACCOUNTS: The Agreement should specify whether payments made under Paragraph [REF _Ref310931538 \r \h] should be deposited in the EPA Hazardous Substance Superfund, or in a site-specific special account within the EPA

Hazardous Substance Superfund, or should be split between the Superfund and the Special Account (and should specify the split).]⁴

13. **Deposit of Payment.** [Insert one of the following three sentences here.] [The total amount to be paid by Settling Parties pursuant to Paragraph [REF _Ref310931538 \r \h] shall be deposited by EPA in the EPA Hazardous Substance Superfund.] [The total amount to be paid pursuant to Paragraph [REF _Ref310931538 \r \h] shall be deposited by EPA in the [Site name] Special Account to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.] [Of the total amount to be paid by Settling Parties pursuant to Paragraph [REF _Ref310931538 \r \h], [“\$ ____” or “ ____%”] shall be deposited by EPA in the EPA Hazardous Substance Superfund and [“\$ ____” or “ ____%”] shall be deposited by EPA in the [Site name] Special Account to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.]

14. **Notice of Payment.** At the time of payment, Settling Parties shall send notice that payment has been made to [EPA in accordance with Section [REF _Ref374460199 \r \h] (Notices and Submissions) and to] the EPA Cincinnati Finance Center by email or by regular mail at:

Email: cinwd_acctsreceivable@epa.gov

Regular mail: EPA Cincinnati Finance Office
26 W. Martin Luther King Drive
Cincinnati, Ohio 45268

Such notice shall reference Site/Spill ID Number _____ and EPA docket number for this action.

[If SFAs are making payments, insert the following paragraph.]

15. **[Payments by Settling Federal Agencies**

a. As soon as reasonably practicable after the Effective Date, the United States, on behalf of Settling Federal Agencies, shall:

(1) Pay to the EPA \$ _____. **[Insert one of the following three sentences.]** [The total amount to be paid on behalf of Settling Federal Agencies pursuant to this Paragraph shall be deposited by EPA in the EPA Hazardous Substance Superfund.] [The total amount to be paid on behalf of Settling Federal Agencies pursuant to this Paragraph shall be deposited by EPA in the [Site name] Special Account to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.] [Of the total amount to be paid on behalf of Settling Federal Agencies pursuant to this Paragraph, [“\$ ____” or “ ____%”] shall be

⁴ When PRPs are performing the response action at the Site, payments made under Paragraph [REF _Ref310931538 \r \h * MERGEFORMAT] may, when appropriate, be directed to PRP-managed trust funds or escrow accounts established pursuant to settlements with EPA rather than to an EPA special account.

deposited by EPA in the EPA Hazardous Substance Superfund and [“\$ ____” or “____%”] shall be deposited by EPA in the [Site name] Special Account to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.]

(2) [Pay to Settling Parties \$ _____, in reimbursement of Settling Parties’ Past Response Costs and Settling Parties Future Response Costs, by Automated Clearinghouse (ACH) Electronic Funds Transfer in accordance with instructions provided by Settling Parties.]

b. **Interest.** In the event that any payment required by Paragraph [REF _Ref310946493 \w \h] is not made within 120 days after the Effective Date, the United States, on behalf of Settling Federal Agencies, shall pay Interest on the unpaid balance, with such Interest commencing on the 121st day after the Effective Date and accruing through the date of the payment.

c. The Parties to this Settlement Agreement recognize and acknowledge that the payment obligations of Settling Federal Agencies under this Settlement Agreement can only be paid from appropriated funds legally available for such purpose. Nothing in this Settlement Agreement shall be interpreted or construed as a commitment or requirement that any Settling Federal Agency obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable provision of law.]

[NOTE: If Settling Parties (or Settling Federal Agencies) have agreed to pay a percentage of actual future costs upon receipt of one or more future bills (option 2 of the Explanatory Note in Section [REF _Ref310944225 \r \h] (Statement of Purpose)), insert the following three Additional Response Costs paragraphs.]

16. **[Payment of Additional Response Costs [by Settling Parties].]** Settling Parties shall pay to the EPA Hazardous Substance Superfund [____%] **[if SFAs, after % is specified for Settling Parties, insert: , and the United States on behalf of Settling Federal Agencies shall pay ____%]** of Additional Response Costs not inconsistent with the National Contingency Plan. If Additional Response Costs are incurred, EPA will send Settling Parties [and Settling Federal Agencies] one or more bills requiring payment **[of the specified percentage]**, which includes a **[insert name of standard Regionally-prepared cost summary]**, which includes direct and indirect costs incurred by EPA, its contractors, and the U.S. Department of Justice. Settling Parties shall make all payments within 30 days after receipt of each bill requiring payment, except as otherwise provided in Paragraph [REF _Ref464824154 \r \h] (Resolution of Disputes Concerning Payment of Additional Response Costs). Payment(s) **[if SFAs, insert: by Settling Parties]** shall be made in accordance with Paragraphs [REF _Ref310946295 \r \h] and [REF _Ref397885193 \r \h] (Notice of Payment) and shall be deposited by EPA in accordance with Paragraph [REF _Ref376877102 \r \h] (Deposit of Payment) **[insert alternative special account deposit instructions if necessary].**⁵

⁵ If PRPs perform the additional response action at the Site pursuant to a settlement with the EPA, and Additional Response Costs are defined to include these PRP-incurred costs, it may be appropriate for

[If SFAs, insert the following Paragraph.]

17. **[Payment of Additional Response Costs by Settling Federal Agencies.** The United States, on behalf of Settling Federal Agencies, shall make all Additional Response Cost payments as soon as reasonably practicable after receipt of each bill requiring payment, in accordance with and subject to the limitations in Paragraph [REF _Ref464824196 \r \h] (Payments by Settling Federal Agencies). EPA shall deposit all Additional Response Costs payment(s) from Settling Federal Agencies in accordance with Paragraph [REF _Ref310946660 \w \h] **[insert alternative special account deposit instructions if necessary]**. In the event that any Additional Response Costs are disputed by Settling Parties in accordance with Paragraph [REF _Ref464824154 \r \h] (Resolution of Disputes with Settling Parties Concerning Payment of Additional Response Costs), the United States shall pay only that portion of the payment required under this Paragraph [REF _Ref310928798 \r \h] that is attributable to the costs that are undisputed by Settling Parties. The remaining portion of the amounts payable under this Paragraph that are attributable to disputed costs as to which the United States prevails pursuant to Paragraph [REF _Ref464824154 \r \h], shall be paid as soon as reasonably practicable after the dispute is resolved, and any such delayed payment shall include Interest from the 121st day after the date of the original bill through the date of payment.]

18. **Resolution of Disputes with Settling Parties Concerning Payment of Additional Response Costs**

[NOTE: Consider whether any ADR options should be included here.]

a. The dispute resolution procedures set forth in this Paragraph shall be the exclusive mechanism for resolving disputes regarding Settling Parties' obligation to pay EPA for Additional Response Costs. The dispute resolution procedures in this Paragraph are limited to disputes regarding recovery of Additional Response Costs. Nothing in this Paragraph shall be deemed to create a right to pre-enforcement review of response actions taken by EPA.

b. Settling Parties may dispute all or part of a bill for Additional Response Costs submitted under this Settlement Agreement if Settling Parties determine that EPA has made a mathematical error or included a cost item that is not within the definition of Additional Response Costs, or if they believe EPA incurred excess costs as a direct result of an EPA action that was inconsistent with a specific provision or provisions of the NCP. If any dispute over costs is resolved before payment is due, the amount due will be adjusted as necessary. If the dispute is not resolved before payment is due, Settling Parties shall pay the full amount of the uncontested costs to EPA as specified in Paragraph [REF _Ref310931975 \r \h] (Payment of Additional Response Costs [by Settling Parties]) on or before the due date. Within the same time period, Settling Parties shall establish, in a duly chartered bank or trust company, an interest-bearing escrow account that is insured by the Federal Deposit Insurance Corporation (FDIC), and shall remit to that escrow account funds equivalent to the amount of the contested Additional Response Costs. Settling Parties shall simultaneously transmit a copy of both checks in accordance with Paragraph [REF _Ref397885193 \r \h] (Notice of Payment). Settling Parties shall ensure that the prevailing party or parties in the dispute shall receive the amount upon

some or all of these Additional Response Costs to be paid directly to the performing PRPs' trust fund or escrow account established pursuant to the work settlement.

which they prevailed from the escrow funds plus interest within ___ days after the dispute is resolved.

[NOTE: The Regions should develop a record for the dispute and its resolution.]

c. If Settling Parties object to any billing for Additional Response Costs, they shall notify EPA in writing of their objection(s) within ___ days after such action, unless the objection(s) has/have been resolved informally. EPA and Settling Parties shall have ___ days from EPA's receipt of Settling Parties' written objection(s) to resolve the dispute through formal negotiations (the "Negotiation Period"). The Negotiation Period may be extended at the sole discretion of EPA.

d. Any agreement reached by the Parties pursuant to this Section shall be in writing and shall, upon signature by the parties to the dispute, be incorporated into and become an enforceable part of this Settlement Agreement. If the Parties are unable to reach an agreement within the Negotiation Period, an EPA management official at the **[insert Region-specific]** level or higher will issue a written decision on the dispute to Settling Parties, which shall not constitute final agency action for purposes of judicial review. EPA's decision shall be incorporated into and become an enforceable part of this Settlement Agreement. Following resolution of the dispute, as provided by this Section, Settling Parties shall make payment in accordance with the agreement reached or with EPA's decision, whichever occurs, in accordance with the instructions in Paragraphs [REF _Ref310946295 \r \h] and [REF _Ref397885193 \r \h] (Notice of Payment), and EPA shall deposit the payment in accordance with Paragraph [REF _Ref376877102 \r \h] (Deposit of Payment) **[insert alternative special account deposit instructions if necessary].**

VII. FAILURE TO COMPLY WITH SETTLEMENT AGREEMENT

19. **Interest on Late Payments.** If any Settling Party fails to make any payment required by Paragraph [REF _Ref310931538 \r \h] (Payment by Settling Parties for Response Costs) **[also reference Additional Response Costs payment, if applicable]** by the required due date, Interest shall continue to accrue on the unpaid balance through the date of payment.

20. Stipulated Penalty

a. If any amounts due to EPA under Paragraph [REF _Ref310931538 \r \h] (Payment by Settling Parties for Response Costs) **[also reference Additional Response Costs payment, if applicable]** are not paid by the required date, Settling Parties shall be in violation of this Settlement Agreement and shall pay to EPA, as a stipulated penalty, in addition to the Interest required by Paragraph [REF _Ref310946998 \r \h] (Interest on Late Payments), \$_____ per violation per day that such payment is late.

[NOTE: If the Settlement Agreement includes any non-payment obligations for which a stipulated penalty is due, such as Section [REF _Ref352161970 \r \h] (Property Requirements), insert: "If Settling Parties do not comply with [insert reference to any non-payment obligations], Settling Parties shall be in violation of this Settlement Agreement and shall pay to EPA, as a stipulated penalty, \$_____ per violation per day of such noncompliance." Escalating penalty payment schedules may be used for payment or non-payment

obligations. Regions may include a more detailed stipulated penalties provision to capture the individual requirements of Section [REF _Ref352162070 \r \h].]

b. All penalties accruing under this Section shall be due and payable to EPA within 30 days after Settling Parties' receipt from EPA of a demand for payment of the penalties. Settling Parties shall make all payments required by this Section to EPA by Fedwire EFT to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read "D 68010727
Environmental Protection Agency"

Each such payment shall reference "stipulated penalties," Site/Spill ID Number _____, and the EPA docket number for this action.

[NOTE: Regions may substitute instructions for payment by ACH or online payment through [HYPERLINK "https://www.pay.gov"]. If Settling Parties have difficulty making EFT or online payments, Regions may substitute the following: Settling Parties shall identify all payments to EPA under this Section as "stipulated penalties" and shall pay them by official bank check made payable to "EPA Hazardous Substances Superfund." The check, or a letter accompanying the check, shall identify the name and address of the party(ies) making payment, Site/Spill ID Number _____, and the EPA Docket Number for this action and shall be sent to:

U.S. Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000]

c. At the time of payment, Settling Parties shall send notice that payment has been made as provided in Paragraph [REF _Ref397885193 \r \h] (Notice of Payment).

d. Penalties shall accrue as provided above regardless of whether EPA has notified Settling Parties of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment **[if non-payment obligations are included, insert: or performance]** is due **[if non-payment obligations are included, insert: , or the day a violation occurs,]** and shall continue to accrue through the date of payment **[if non-payment obligations are included, insert: or the final day of correction of the noncompliance or completion of the activity.]** Nothing in this Settlement Agreement shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement.

21. In addition to the Interest and Stipulated Penalty payments required by this Section and any other remedies or sanctions available to the United States by virtue of Settling Parties' failure to comply with the requirements of this Settlement Agreement, any Settling Party

who fails or refuses to comply with any term or condition of this Settlement Agreement shall be subject to enforcement action pursuant to Section 122(h)(3) of CERCLA, 42 U.S.C.

§ 9622(h)(3). If the United States brings an action to enforce this Settlement Agreement, Settling Parties shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

22. The obligations of Settling Parties to pay amounts owed to EPA under this Settlement Agreement are joint and several. In the event of the insolvency of any Settling Party or the failure by any Settling Party to make the payments required under this Settlement Agreement, the remaining Settling Parties shall be responsible for such payments.⁶

23. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Settlement Agreement. Settling Parties' payment of stipulated penalties shall not excuse Settling Parties from payment as required by Section [REF _Ref310943104 \r \h] or from performance of any other requirements of this Settlement Agreement.

VIII. COVENANTS BY EPA

24. **Covenants for Settling Parties by EPA.** Except as specifically provided in Section [REF _Ref310944070 \r \h] (Reservations of Rights by EPA), EPA covenants not to sue or to take administrative action against Settling Parties pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), [and Section 7003 of RCRA, 42 U.S.C. § 6973,]⁷ with regard to the Site.⁸ With respect to present and future liability, these covenants shall take effect upon the Effective Date. These covenants are conditioned upon the satisfactory performance by Settling Parties of their obligations under this Settlement Agreement. These covenants extend only to Settling Parties and do not extend to any other person.

[NOTE: If SFAs are making payments and qualify for peripheral party status at the Site, insert the following covenant. If they do not qualify for peripheral party status, the scope of the covenant will require case-specific discussion.]

⁶ If multiple, wholly unrelated parties are settling with EPA in one peripheral party agreement, then it may be appropriate to make the obligation to pay, and the consequences of non-payment (i.e., interest and stipulated penalties), individual rather than joint and several.

⁷ If including a RCRA § 7003 covenant in Paragraph [REF _Ref310947145 \r \h * MERGEFORMAT] (and [REF _Ref310947152 \r \h * MERGEFORMAT] if SFAs), pursuant to Section 7003(d) of RCRA, you must offer to have a public meeting regarding the settlement and hold such a meeting if requested. To do this, include language in the Federal Register notice providing for an opportunity for a public meeting in the affected area. For guidance regarding how to comply with this requirement, see "Revised Model Notice Language for Compliance with Public Participation Requirements of Section 7003(d) of RCRA" (Oct. 30, 1996), available at [HYPERLINK "file:///C:/Users/Mmccul02/AppData/Local/Microsoft/Windows/Temporary%20Internet%20Files/Content.Outlook/BPW0GY19/https/www.epa.gov/enforcement/guidance-model-language-compliance-public-participation-requirements-under-rcra-section"].

⁸ This covenant assumes that EPA has decided to grant a full covenant not to sue for the Site as a whole. If a covenant of lesser scope is intended, this will need to be narrowed.

25. [Covenant for Settling Federal Agencies by EPA.⁹ Except as specifically provided in Paragraph [REF _Ref310947075 \r \h] (Reservation of Rights by EPA), EPA covenants not to take administrative action against Settling Federal Agencies pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), [and Section 7003 of RCRA, 42 U.S.C. § 6973,] with regard to the Site.¹⁰ With respect to present and future liability, this covenant shall take effect upon the Effective Date. This covenant is conditioned upon the satisfactory performance by Settling Federal Agencies of their obligations under this Settlement Agreement. This covenant extends only to Settling Federal Agencies and does not extend to any other person.]

IX. RESERVATIONS OF RIGHTS BY EPA

26. EPA reserves, and this Settlement Agreement is without prejudice to, all rights against Settling Parties [if SFA, insert: and Settling Federal Agencies] with respect to all matters not expressly included within Paragraph [REF _Ref310947145 \r \h] (Covenants for Settling Parties by EPA) [if SFAs, insert: and Paragraph [REF _Ref310947152 \r \h] (Covenant for Settling Federal Agencies by EPA)]. Notwithstanding any other provision of this Settlement Agreement, EPA reserves all rights against Settling Parties [if SFAs, insert: and EPA reserves and this Settlement Agreement is without prejudice to, all rights against Settling Federal Agencies,] with respect to:

- a. liability for failure of Settling Parties [or Settling Federal Agencies] to meet a requirement of this Settlement Agreement;
- b. criminal liability;
- c. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- d. liability based on the ownership or operation of the Site by Settling Parties [or Settling Federal Agencies] when such ownership or operation commences after signature of this Settlement Agreement by Settling Parties [or Settling Federal Agencies];
- e. liability based on Settling Parties' [or Settling Federal Agencies'] transportation, treatment, storage, or disposal, or arrangement for transportation, treatment, storage, or disposal of a hazardous substance or a solid waste at or in connection with the Site, after signature of this Settlement Agreement by Settling Parties [or Settling Federal Agencies]; [and]
- f. liability arising from the past, present, or future disposal, release or threat of release of a hazardous substance, pollutant, or contaminant outside of the Site[.] [; and]

[NOTE: Insert Paragraph [REF _Ref313448980 \w \h] if Settling Parties (or SFAs) have not agreed in Section [REF _Ref310943104 \r \h] (Payment of Response Costs) to compensate EPA for the costs described in Paragraph [REF _Ref313448980 \w \h]

⁹ In some instances, EPA's covenant may also be extended to a federal PRP contractor where the federal PRP settlement includes the contractor. This generally occurs where the contractor is indemnified by the United States under the contract.

¹⁰ See notes 7 and 8, *supra*.

through a premium payment or through an Additional Response Costs billing provision as shown in the optional Payment of Additional Response Costs paragraphs in Section VI (Payment of Response Costs).]

g. [liability for performance of response action or for reimbursement of response costs if total response costs incurred or to be incurred at or in connection with the Site by the United States or any other person exceed \$ _____ [insert total response cost estimate upon which Settling Parties' and SFAs', if any, payment is based].

27. Nothing in this Settlement Agreement is intended to be nor shall it be construed as a release, covenant not to sue, or compromise of any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, that EPA may have against any person, firm, corporation or other entity not a signatory to this Settlement Agreement.

X. COVENANTS BY SETTTLING PARTIES [AND SETTTLING FEDERAL AGENCIES]

28. **Covenants by Settling Parties.** Settling Parties covenant not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Site¹¹ and this Settlement Agreement, including but not limited to:

a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claims arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the [State] Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, or at common law; or

c. any claim pursuant to Sections 107 or 113 of CERCLA, 42 U.S.C. §§ 9607 or 9613, Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), or state law relating to the Site.

[If SFAs, insert the following paragraph.]

29. **[Covenant by Settling Federal Agencies.** Settling Federal Agencies agree not to assert any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund through CERCLA §§ 106(b)(2), 107, 111, 112, 113 or any other provision of law with respect to the Site and this Settlement Agreement. This covenant does not preclude demand for reimbursement from the Superfund of costs incurred by a Settling Federal Agency in the performance of its duties (other than pursuant to this Settlement Agreement) as lead or support agency under the National Contingency Plan (40 C.F.R. Part 300).]

30. [Except as provided in Paragraph [REF _Ref464824463 \r \h] (claims against other PRPs) and Paragraph [REF _Ref310947296 \r \h] (res judicata and other defenses), the

¹¹ If the Settlement Agreement does not cover the Site as a whole, the reference to “the Site” here and in Paragraphs [REF _Ref313449376 \r \h * MERGEFORMAT] and [REF _Ref313449384 \r \h * MERGEFORMAT] should be narrowed to conform to the intended scope of the Settlement Agreement.

covenants in this Section shall not apply in the event EPA brings a cause of action or issues an order pursuant to any of the reservations in Section [REF _Ref310944070 \r \h] (Reservations of Rights by EPA), other than in Paragraph [REF _Ref310947338 \w \h] (liability for failure to meet a requirement of the Settlement Agreement) or [REF _Ref310947345 \w \h] (criminal liability), but only to the extent that Settling Parties' claims arise from the same response action or response costs that EPA is seeking pursuant to the applicable reservation.]

31. Nothing in this Settlement Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

32. Settling Parties agree not to assert any claims and to waive all claims or causes of action (including but not limited to claims or causes of action under Sections 107(a) and 113 of CERCLA) that they may have for response costs **[if NRD claims are being resolved through this settlement, insert: and for natural resource damages and assessment costs]** relating to the Site against **[if multiple settlors, insert: each other or]** any other person who is a potentially responsible party under CERCLA at the Site. This waiver shall not apply with respect to any defense, claim, or cause of action that a Settling Party may have against any person if such person asserts a claim or cause of action relating to the Site against such Settling Party. **[NOTE: If a Settling Party asserts that it has a claim against a PRP within the scope of this waiver that is unrelated to the PRP's CERCLA liability at the Site, e.g., a claim for contractual indemnification, add an exception for such claim such as the following: This waiver also shall not apply to Settling Party [insert name]'s contractual indemnification claim against [insert name].]**

XI. EFFECT OF SETTLEMENT/CONTRIBUTION

33. Except as provided in Paragraph [REF _Ref464824463 \w \h] (claims against other PRPs), nothing in this Settlement Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement Agreement. Except as provided in Section [REF _Ref310943908 \r \h] (Covenants by Settling Parties [and Settling Federal Agencies]), each of the Parties reserves any and all rights (including, but not limited to, under Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action that it may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Settlement Agreement diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

34. The Parties agree that this Settlement Agreement constitutes an administrative settlement pursuant to which Settling Parties **[if SFAs, insert: and Settling Federal Agencies]** have, as of the Effective Date, resolved liability within the meaning of Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), and are entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, or as may be otherwise provided by law, for the "matters addressed" in this Settlement Agreement. The "matters addressed" in this Settlement Agreement are all response actions taken or to be taken and all response costs incurred or to be

incurred, at or in connection with the Site, by the United States or by any other person, except for the State;¹² provided, however, that if EPA exercises rights under the reservations in Section [REF _Ref310944070 \r \h] (Reservations of Rights by EPA), other than in Paragraphs [REF _Ref310947338 \w \h] (liability for failure to meet a requirement of the Settlement Agreement) or [REF _Ref310947345 \w \h] (criminal liability), the “matters addressed” in this Settlement Agreement will no longer include those response costs or response actions **[if the settlement includes a natural resource damages settlement include:** or natural resource damages] that are within the scope of the exercised reservation.¹³

35. The Parties further agree that this Settlement Agreement constitutes an administrative settlement pursuant to which each Settling Party **[if SFAs, insert:** and each Settling Federal Agency] has, as of the Effective Date, resolved liability to the United States within the meaning of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

36. Each Settling Party shall, with respect to any suit or claim brought by it for matters related to this Settlement Agreement, notify EPA in writing no later than 60 days prior to the initiation of such suit or claim. Each Settling Party also shall, with respect to any suit or claim brought against it for matters related to this Settlement Agreement, notify EPA in writing within 10 days after service of the complaint or claim upon it. In addition, each Settling Party shall notify EPA within 10 days after service or receipt of any Motion for Summary Judgment and within 10 days after receipt of any order from a court setting a case for trial, for matters related to this Settlement Agreement.

37. In any subsequent administrative or judicial proceeding initiated by EPA, or the United States on behalf of EPA, for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Parties **[if SFAs, insert:** and Settling Federal Agencies] shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by EPA, or the United States on behalf of EPA, in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenants by EPA set forth in Section [REF _Ref310943953 \r \h].

38. Effective upon signature of this Settlement Agreement by a Settling Party, such Settling Party agrees that the time period commencing on the date of its signature and ending on the date EPA receives from such Settling Party the payment(s) required by Section VI (Payment of Response Costs) and, if any, Section [REF _Ref310943221 \r \h] (Failure to Comply with Settlement Agreement) shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by the United States related to the “matters addressed” as defined in Paragraph [REF _Ref464824544 \w \h], and that, in any

¹² If the State is a party and is resolving its claims regarding the Site through the Settlement Agreement, delete “except for the State.” Note that State claims do not include claims for Hazardous Substance Superfund costs that have been provided to the State through a cooperative agreement with EPA and for which EPA retains the responsibility for cost recovery.

¹³ This definition of “matters addressed” assumes that this Settlement Agreement contains a site-wide covenant not to sue by the United States pursuant to Sections 106 and 107(a) of CERCLA, subject only to the reservations of rights. If the intended resolution of liability is narrower in scope, then the definition of “matters addressed” will need to be narrowed.

action brought by the United States related to the “matters addressed,” such Settling Party will not assert, and may not maintain, any defense or claim based upon principles of statute of limitations, waiver, laches, estoppel, or other defense based on the passage of time during such period. If EPA gives notice to Settling Parties that it will not make this Settlement Agreement effective, the statute of limitations shall begin to run again commencing 90 days after the date such notice is sent by EPA.

XII. PROPERTY REQUIREMENTS

[NOTE: This Section should be used if any Settling Party is a Site owner or otherwise controls access to the Site and access and/or use restrictions are needed. If access is needed to real property owned or controlled by a Settling Party, use Paragraph [REF _Ref393885138 \r \h].a. If land, water, or other resource use restrictions are needed on real property owned or controlled by a Settling Party, use Paragraph [REF _Ref393885138 \r \h].b. If EPA has issued a record of decision or an action memorandum that provides for institutional controls (ICs) on real property owned by a Settling Party, then relevant provisions from the remedial design/remedial action consent decree or the removal administrative settlement agreement and order on consent, as appropriate, relating to ICs implementation, plan review and approval, payment of future oversight costs, dispute resolution, etc., may be needed and should be adapted for use in this model. Additional changes to this section of the model will be needed in the event that access or land, water, or other resource use restrictions are needed on or affect a federal facility.]

39. Agreements Regarding Access and Non-Interference. Owner Settling Party shall, with respect to its Affected Property:

a. Provide the United States [, the State,] potentially responsible parties who have entered or may enter into an agreement with the United States [or the State] for performance of response actions at the Site (hereinafter “Performing Parties”), and their representatives, contractors, and subcontractors with access at all reasonable times to its Affected Property to conduct any activity relating to response actions at the Site including the following activities:

[NOTE: Augment this list as appropriate.]

- (1) Verifying any data or information submitted to the United States [or the State];
- (2) Conducting investigations regarding contamination at or near the Site;
- (3) Obtaining samples;
- (4) Assessing the need for, planning, implementing, or monitoring response actions;
- (5) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Owner Settling Party or its agents, consistent with Section [REF _Ref310944740 \r \h] (Access to Information);

(6) Assessing Owner Settling Party's compliance with the Settlement Agreement;

(7) Determining whether the Affected Property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted under the Settlement Agreement; and

(8) Implementing, monitoring, maintaining, reporting on, and enforcing [any institutional controls or] any land, water, or other resource use restrictions regarding the Affected Property.

b. Refrain from using its Affected Property in any manner that EPA determines will (i) pose an unacceptable risk to human health or to the environment due to exposure to hazardous substances or (ii) interfere with or adversely affect the implementation, integrity, or protectiveness of response actions at the Site, including the following restrictions:

[NOTE: Customize and augment this list as appropriate. Be as specific as possible.]

(1) Prohibiting the following activities which could interfere with response actions at the Site: _____;

(2) Prohibiting use of contaminated groundwater;

(3) Prohibiting the following activities which could result in exposure to contaminants in subsurface soils and groundwater: _____;

(4) Ensuring that any new structures on the Affected Property will not be constructed in the following manner which could interfere with response actions at the Site: _____; and

(5) Ensuring that any new structures on the Affected Property will be constructed in the following manner which will minimize potential risk of inhalation of contaminants: _____.

40. If EPA determines in a decision document prepared in accordance with the NCP that institutional controls in the form of state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices are needed regarding the Affected Property, Owner Settling Party shall cooperate with EPA's [and the State's] efforts to secure and ensure compliance with such institutional controls.

41. Notice to Successors-in-Title.

a. Owner Settling Party shall, within 15 days after the Effective Date, submit for EPA approval a notice to be filed regarding the Affected Property in the appropriate land records. The notice must: (1) include a proper legal description of the Affected Property; (2) provide notice to all successors-in-title: (i) that the Affected Property is part of, or related to, the Site; (ii) that EPA [performed / has selected] a response action for the Site **[if applicable: ;** and (iii) that potentially responsible parties are required to implement the response action]; and (3) identify the document requiring implementation of the response action, including, if applicable, the name and civil action or docket number of the matter. Owner Settling Party shall

record the notice within 10 days after EPA's approval of the notice and submit to EPA, within 10 days thereafter, a certified copy of the recorded notice.

b. Owner Settling Party shall, prior to entering into a contract to Transfer its Affected Property, or 60 days prior to Transferring its Affected Property, whichever is earlier:

(1) Notify the proposed transferee that EPA [performed / has selected] a response action regarding the Site **[if applicable]**, that potentially responsible parties are required to implement response actions regarding the Site, including information identifying the document requiring such implementation,]; and

(2) Notify EPA [and the State] of the name and address of the proposed transferee and provide EPA [and the State] with a copy of the above notice that it provided to the proposed transferee.

42. In the event of any Transfer of the Affected Property, unless EPA otherwise consents in writing, Owner Settling Party shall continue to comply with its obligations under the Settlement Agreement.

43. Notwithstanding any provision of this Settlement Agreement, EPA [and the State] retain[s] all of its [their] access authorities and rights, as well as all of its [their] rights to require institutional controls, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statute or regulations.

XIII. ACCESS TO INFORMATION

[NOTE: This Section may be omitted if Settling Parties have not been and will not be involved in cleanup efforts at the Site and if Settling Parties do not possess any additional information beyond that already provided that may assist EPA in its cleanup or enforcement efforts.]

44. Settling Parties shall provide to EPA, upon request, copies of all records, reports, documents, and other information (including records, reports, documents and other information in electronic form) (hereinafter referred to as "Records") within their possession or control or that of their contractors or agents relating to activities at the Site **[if needed, include]** or to the implementation of this Settlement Agreement], including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information regarding the Site.

45. Privileged and Protected Claims

a. Settling Parties may assert that all or part of a Record is privileged or protected as provided under federal law, provided they comply with Paragraph [REF _Ref352157229 \w \h], and except as provided in Paragraph [REF _Ref362953000 \w \h].

b. If Settling Parties assert a claim of privilege or protection, they shall provide EPA with the following information regarding such Record: its title; its date; the name, title, affiliation (e.g., company or firm), and address of the author, each addressee, and of each recipient; a description of the Record's contents; and the privilege or protection asserted. If a claim of privilege or protection applies only to a portion of a Record, Settling Parties shall

provide the record to EPA in redacted form to mask the privilege or protection only. Settling Parties shall retain all Records that they claim to be privileged or protected until EPA has had a reasonable opportunity to dispute the privilege or protection claim and any such dispute has been resolved in the Settling Parties' favor.

c. Settling Parties may make no claim of privilege or protection regarding:

(1) any data regarding the Site, including but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, radiological, or engineering data, or the portion of any other Record that evidences conditions at or around the Site; or

(2) the portion of any Record that Settling Parties are required to create or generate pursuant to this Settlement Agreement.

46. **Business Confidential Claims.** Settling Parties may assert that all or part of a Record submitted to EPA under this Section or Section [REF _Ref362953306 \r \h] (Retention of Records) is business confidential to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Records that Settling Parties claim to be confidential business information will be accorded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies Records when they are submitted to EPA, or if EPA has notified Settling Parties that the Records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2 Subpart B, the public may be given access to such Records without further notice to Settling Parties.

47. Notwithstanding any provision of this Settlement Agreement, EPA [and the State] retain[s] all of its [their] information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, and any other applicable statute or regulations.

XIV. RETENTION OF RECORDS

[NOTE: The following two paragraphs may be deleted in peripheral party settlements if the Region believes that all relevant records have already been provided to EPA. If they are deleted, change the title of this Section to Certification.]

48. [Until __ years after the Effective Date, each Settling Party shall preserve and retain all non-identical copies of [Records] **[if Access to Information Section is not used, insert: records, reports, documents, and other information (including records, reports, documents and other information in electronic form) (hereinafter referred to as "Records")]** now in its possession or control, or that come into its possession or control, that relate in any manner to its liability under CERCLA with respect to the Site, provided, however, that Settling Parties who are potentially liable as owners or operators of the Site must retain, in addition, all Records that relate to the liability of any other person under CERCLA with respect to the Site. Each of these requirements shall apply regardless of any corporate retention policy to the contrary.

49. At the conclusion of the document retention period, Settling Parties shall notify EPA at least 90 days prior to the destruction of any such Records, and, upon request by EPA, except as provided in Paragraph [REF _Ref351562022 \r \h] (Privileged and Protected Claims), Settling Parties shall deliver such Records to EPA.

[NOTE: If Access to Information Section is not used, insert the text of Paragraphs [REF _Ref351562022 \r \h * MERGEFORMAT] (Privileged and Protected Claims) and [REF _Ref374532388 \r \h] (Business Confidential Claims) here.]

50. Each Settling Party certifies individually that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any [Records] [if “Records” term not previously introduced, insert: records, reports, documents, or other information (including records, reports, documents and other information in electronic form)] (other than identical copies) relating to its potential liability regarding the Site, since notification of potential liability by the United States or the State and that it has fully complied with any and all EPA and State requests for information regarding the Site pursuant to Sections 104(e) and 122(e)(3)(B) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e)(3)(B), Section 3007 of RCRA, 42 U.S.C. § 6927, and state law.

[If SFAs, insert the following paragraph.]

51. [The United States acknowledges that each Settling Federal Agency (a) is subject to all applicable Federal record retention laws, regulations, and policies; and (b) has certified that it has fully complied with any and all EPA and State requests for information regarding the Site pursuant to Sections 104(e) and 122(e)(3)(B) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e)(3)(B), Section 3007 of RCRA, 42 U.S.C. § 6927, and state law.¹⁴]

XV. NOTICES AND SUBMISSIONS

52. Whenever, under the terms of this Settlement Agreement, notice is required to be given or a document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Except as otherwise provided, notice to a Party by email (if that option is provided below) or by regular mail in accordance with this Section satisfies any notice requirement of this Settlement Agreement regarding such Party.

As to EPA: [Insert name, address, and email of Regional Attorney or Remedial Project Manager]

[As to SFAs: Chief
U.S. Department of Justice
Environment and Natural Resources Division
Environmental Defense Section
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ # _____]

As to Settling Parties: [Insert name, address, and email]

¹⁴ EPA attorneys must assure that the Agency has received a written response to any information requests that it has sent to SFAs containing a certification substantially similar to that required from private PRPs.

[Insert name and address of one person who will serve as the contact for all Settling Parties]

XVI. INTEGRATION[/APPENDICES]

53. This Settlement Agreement [and its appendices] constitute[s] the final, complete, and exclusive Settlement Agreement and understanding among the Parties with respect to the settlement embodied in this Settlement Agreement. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Settlement Agreement. [The following appendices are attached to and incorporated into this Settlement Agreement: “Appendix __” is the list of Settling Parties; “Appendix __” is the list of Settling Federal Agencies; and “Appendix __” is the map of the Site.]

XVII. PUBLIC COMMENT

54. This Settlement Agreement shall be subject to a public comment period of at least 30 days pursuant to Section 122(i) of CERCLA, 42 U.S.C. § 9622(i). In accordance with Section 122(i)(3) of CERCLA, the United States may modify or withdraw its consent to this Settlement Agreement if comments received disclose facts or considerations that indicate that this Settlement Agreement is inappropriate, improper, or inadequate.

XVIII. EFFECTIVE DATE

55. The effective date of this Settlement Agreement shall be the date upon which EPA issues written notice that the public comment period pursuant to Paragraph [REF _Ref310948313 \r \h] has closed and that comments received, if any, do not require modification of or withdrawal by the United States from this Settlement Agreement. **[NOTE: This notice should inform Settling Parties and SFAs, if any, that payment is now due in accordance with Paragraph [REF _Ref310931538 \r \h] (Payment by Settling Parties for Response Costs) (and Paragraph [REF _Ref310946502 \w \h] (Payments by Settling Federal Agencies) for SFAs) and should include a calculation of any Interest to be included with Settling Parties’ payment in accordance with Paragraph [REF _Ref310931538 \r \h].]**

IT IS SO AGREED:

U.S. ENVIRONMENTAL PROTECTION AGENCY

Dated

[Name]
[Title]

Signature Page for Settlement Agreement Regarding _____ Superfund Site

U.S. DEPARTMENT OF JUSTICE:

Dated

[Name]
[Assistant Attorney General/ Deputy Section Chief]¹⁵
U.S. Department of Justice
Environment and Natural Resources Division
[Environmental Enforcement Section]
Washington, D.C. [20530/20044-7611]

[Name]
Trial Attorney
U.S. Department of Justice
Environment and Natural Resources Division
Environmental Enforcement Section
P.O. Box 7611
Washington, DC 20044-7611

¹⁵ The DOJ attorney assigned to the matter will determine who has the authority to approve the settlement under the current applicable DOJ delegations.

Signature Page for Settlement Agreement Regarding _____ Superfund Site

[If Settling Federal Agencies, insert signature blocks for each settling federal agency. If SFAs are too numerous or signature by each and every SFA is otherwise impractical, DOJ may sign the agreement on behalf of the SFAs.]

FOR SETTTLING FEDERAL AGENCY:

Dated

[Name]

[Insert Title, Address, etc.]

Signature Page for Settlement Agreement Regarding _____ Superfund Site

FOR _____ :
[Print name of Settling Party]

Dated

[Name]
[Title]
[Company]
[Address]

[NOTE: A separate signature page must be signed by each settlor.]

Instructions Regarding Automated Features

FEATURE	INSTRUCTIONS
Inserting text copied from a different document	Text copied from a different document will usually have embedded formatting codes. Pasting the text into your document will cause the formatting codes to be inserted as well, which will create unpredictable and frustrating formatting and numbering results. Therefore, ALWAYS use the “Paste Special” function to insert text copied from another document. Press Ctrl-Alt-V; in the pop-up menu, click “Unformatted Text” and OK. (You can also click the Home tab, Paste, Paste Special, Unformatted Text and OK.)
Inserting a new paragraph	Click at the end of the ¶ immediately preceding the place where you wish to add the new paragraph , and press Enter. To change the new ¶'s outline level use (under the Home tab) the styles menu. For example, to change ¶12.b into ¶12.a(1), click in that ¶ and then (using the Home tab) click the "LVL 3" style. To change ¶13.a into ¶14, click in that ¶ and then (using the Home tab) click the “LVL 1” Style. Note that in consent decree models, the letters denoting each background paragraph must be manually updated.
Adding an updateable section or paragraph cross-reference	(a) Click where you wish to insert a cross-reference; (b) Click the “References” tab, and, in the “Captions” box, click “Cross-reference;” (c) In the pop-up menu that appears, make sure the “Reference type” field contains “Numbered item” and the “Insert reference to” field contains “Paragraph Number (full context); (d) In the “For which numbered item” field” select the numbered item (section, paragraph. or subparagraph) you wish to cross-reference, and click Insert.
Updating the cross-references	Press Ctrl-A (to select entire document); right click; in the pop-up menu, click “Update Field;” click OK. Note: If a numbered paragraph that has been cross-referenced elsewhere in the document is deleted, remove the obsolete paragraph cross-reference. Otherwise, when you update the cross-references, the following message will appear: “Error! Reference source not found.”
Updating the table of contents	Right-click in the TOC, and in the pop-up menu, left-click “Update Field.” Or click in the TOC, press F9, click Update Entire Table and OK. If you have just added a new section heading, click Update entire table before pressing Enter.
Inserting a new section heading	Click in the text of the new heading and assign the “SECTION” paragraph style to the text by clicking the “Home” tab, and in Styles box, clicking the “SECTION” style button.) That will add the section number, change the numbering of later sections, and ensure that the new section will be referenced in the table of contents.
Changing the font	Press Ctrl-A (to select entire document); right click; in the pop-up menu, click “Font;” in the “font” field, select a new font; click OK.